The Collector found that he chargee had not collected the rents with due diligence and allowed the full sum which might have been collected, and ordered that the land should be sold for the principal sum and interest accumulated up to the date of his order at 12 per cent. and thereafter at 8 per cent., less $1,740 being the full amount of the rent that the chargee should have collected.

In the grounds of his decision the Collector states that —

"On examination of the accounts I find a considerable lack of diligence in the collection of rent both as regards regularity of collection and in the amount collected."

It has been contended on this appeal that the Collector arrived at this decision without fully going into the evidence. This contention is, in my opinion, justified since no opportunity was given to cross-examine the chargor at the adjourned hearing.

But it would also seem that the Collector exceeded his duties. In section 142, which I have already set out, the Collector is authorised to determine if no cause be shown to his satisfaction. When a cause is shown to his satisfaction he should either, in a proper case, refuse to determine or postpone determination until the chargor has had an opportunity to give effect by suit or otherwise to the cause shown. There would not appear to be any power for the Collector on an application of this kind to determine extraneous matters, such as a question of the right to recover damages for negligence. I would suggest that the proper course in the present case would have been to have fully heard the reasons advanced by the chargor, and if satisfied that cause had been shown, to have stayed the further hearing of the application until such reasonable time as would allow the chargor to take such action as he might be advised.

The order of the Collector must be set aside, and the matter referred to him to be dealt with under section 142 of the Land Code. The appeal is allowed with costs.

Appeal allowed.

M. D. A. GOONATILLAKE v. PUBLIC PROSECUTOR

[A. Cr. J. (Mills J.) December 1, 1935]

[Johore Bahru Criminal Appeal No. 19 of 1935]

Rubber regulation — Construction — Meaning of "tappable" — False information in a return — Rubber Regulation Enactment, *ss.19(i)(c) and 21(i)(c).*

The expression "tappable rubber" in a form furnished by the Controller of Rubber under the Rubber Regulation Enactment to owners of medium holdings for the purpose of assessment of standard production means "rubber plants mature for tapping."

In a charge under section 21(i)(c) of the Enactment for wilfully furnishing false information, an offence is committed if the false information is wilfully furnished and it is immaterial whether that information is or is not wilfully false.

Faith (Assistant Controller of Rubber, Kukop) for the prosecution.

Das for the accused.

Appeal from the decision of the Magistrate at Pontian Kechil.

On the 18th June, 1934 M. D. K. Goonatillake submitted to the Assistant Controller of Rubber, Kukop, for the purpose of the assessment of his holding a return signed by himself of the acreage on his holding planted with rubber.

The Assistant Controller of Rubber accepted the accused's statement that the land comprised in Surat Semantara 409/26 and 410/26 contained 11 acres 1 rood and 11 poles of "tappable rubber" and the prosecution was confined to the alleged falsity of the information that there were forty acres of "tappable rubber" in Grant 8973, referred to in the evidence and in grounds of judgment of the learned Magistrate below as Lot 2621.

On the 6th October, 1935 Mr. J. E. Green, a Senior Rubber Inspector, visited the holding and found approximately 14 acres only of land planted with trees which he classed as "tappable rubber." He found that the remainder of the forty acres was partly planted with immature rubber and was partly blukar.

The case came on for hearing before the Magistrate at Pontian Kechil on the 9th and 16th October, 1935.

The accused was convicted and fined $250. He appealed from the conviction and sentence, and the following grounds of judgment were given.

Weiss (First Magistrate): This case turned on the construction of two separate terms — one in the section of the Enactment under which the accused was charged, while the other is employed by the Controller of Rubber in the administration of the Enactment.

[48] In the Form (Ex. "B"), which is the form furnished by the Controller to owners of medium holdings for the purpose of provisional assessment, the owner is required to declare, *inter alia,* the area of tappable rubber — on his holding. "Tappable rubber" is not defined in the Enactment, and I therefore construed these words to mean, — as intended by the controller to mean, and as having been understood by the appellant to mean, — such rubber as would be tapped in the course of ordinary planting operations. [48]

The appellant declared, and still claimed at the trial, that on lot No. 2621 forty acres were planted with tappable rubber. The evidence of Mr. Green, the Rubber Inspector, appeared to me to establish conclusively that only 14 acres were so planted in this area. Subsequent to the first day's hearing, however, the witness Mohamed bin Jamaludin, a licensed appraiser, visited the holding on behalf of the appellant and counted 3,929 trees which he classed as mature rubber trees. Apart from the suspicion which is naturally aroused by evidence obtained during the course of a trial I had no particular reason to doubt the truth of this statement, for what it was worth. It was argued, that as these trees were scattered over the whole of the forty acres, no matter how varied the distribution, there was an average of at least 90 trees per acre, and that to claim that forty acres were

planted with "tappable rubber" was therefore quite legitimate.

It seemed to me that this question was one of fact. For if, irrespective of their quality or yield, a stand of 90 trees must constitute an acre of tappable rubber, the same might be said of a stand of 20 trees or, indeed, of a rectangular acre with four trees planted, one at each corner. Moreover I felt some doubt, having regard to the method of measurement employed, as to whether in this case the average amounted to as many as 90, even including dead or otherwise untappable trees, while it was stated by Mr. Green that for the purpose of assessment an acre should be deemed to comprise 200 trees.

For these reasons I found that, although the appellant might have been justified in claiming to have something rather more than 14 acres of "tappable rubber," his declaration that 40 acres were "tappable" must be deemed a false declaration.

On this finding, a second line of defence was raised. It was said that even if the declaration were false, it was not wilfully false. It might be observed that the offence charged is not that of making a declaration which is wiltully false, but of wilfully making a declaration which is in fact false. I considered, however, the appellant's plea that his declaration was not intentionally false.

The onus of proving a mistake lies on the party who sets up the mistake to establish his case. The appellant is the sole owner of the holding and accepted full responsibility for the declaration made. He admitted having inspected the holding at the time he acquired it in 1932 and must be presumed to have been familiar with its subsequent state of cultivation. I concluded therefore that it lay upon him to substantiate his plea and that he had to show that in his honest belief forty acres were tappable.

Firstly, it was sought to invoke the Certificate of Production issued under "The Rubber Dealers Enactment," on the ground that this certificate gave the planted area of Lot 2621 as 40 acres. But the original certificate might have been issued at any time after the issue of the grant in 1924 and the duplicate certificate (though re-dated) conveyed to him nothing more than the information given by the applicant for the original certificate that 40 acres had been planted at some time since 1924. Such information was obviously valueless for the purpose of the declaration under the Rubber Regulation Enactment, and I did not believe that the appellant could have placed any reliance upon it.

Secondly, the appellant says that he relied on the result of his production. He claims to have produced an average monthly crop from Lot 2621 of 1,800 to 2,000 pounds. This means an average of nearly 50 pounds per acre per month, or 600 pounds per annum. Mr. Green, on being recalled, was emphatic that such a yield must have been impossible from trees of the quality and in the condition (then and now) of those on this lot. He estimated the maximum possible yield, on the five best blocks only, at no more than 330 pounds per acre per annum. This expert opinion caused me to doubt the accuracy of the appellant's figure, and when asked to produce some corroborative evidence, such as entries from books, or receipts or sales notes, which should have been easily available, he confessed himself unable to do so. Accordingly I disregarded this part of his evidence.

I found therefore that the appellant was left without any grounds on which he could claim to justify his alleged belief that there were in fact 40 acres of "tappable" rubber on Lot 2621. He admitted that he had never surveyed or measured the area, and from that I concluded that his declaration, if not deliberately false, was made with reckless indifference as to its truth.

There can be no doubt that the declaration was "wilfully" made, but in order to hold that it was "wilfully" false it was necessary first to decide that the reckless indifference, in this case amounted to "wilfulness." In so deciding I was influenced by the consideration that the Enactment is designed for the benefit of the class of persons to which the appellant belongs, and that good faith is essential to its successful operation. [49] I felt little doubt that the appellant knew his declaration to be misleading, and that he hoped thereby to secure an assessment to which he knew he had no lawful right. [49]

The appeal was heard before Mills J.

Goho for the appellant.

Hamid (Deputy Public Prosecutor) for the respondent.

At the hearing of the appeal counsel for appellant asked that the questions of interpretation which had arisen be referred under section 55 of the Courts Enactment, 1920, to the Court of Appeal for determination. This was refused.

Cur. Adv. Vult.

Mills J.: During the hearing of this appeal, two questions of interpretation arose for determination.

In the first instance, the Court had to construe the word "tappable" as it appears in the expression, "The area of tappable rubber" in a form furnished by the Controller of Rubber to owners of medium holdings for the purpose of assessing their standard production under the Rubber Regulation Enactment, 1934.

The word "Tappable" does not appear to be used in the Enactment, and it is not defined in the Rubber Regulation (Assessment) Rules, 1934 (Notification No. 798 of the 10th October, 1934) which contain the expression "tappable area" and "tappable state."

I was asked to hold that a tree is tappable when it is old enough to produce a single drop of latex.

I was unable to accede to that rendering.

In my opinion, it is contrary to common sense and to the objects of the Rubber Regulation Enactment.

Furthermore, it appears to me that the Legislature has indicated what meaning is to be attached to the word "Tappable" for in section 5(i) one finds the expression "the area under young or immature

rubber" and in section 6(iii)(a), the expression "postponed the initial tapping of his rubber plants substantially beyond maturity.

It appears to me to follow that the Legiaslature regards a tree as tappable when it becomes mature for tapping and not before. Whether or not a tree is mature for tapping is a matter of fact to be proved in the same manner as other matters of fact.

I rule that in the form under consideration the expression "tappable rubber" means "rubber plants mature for tapping."

In the second instance, the Court had to construe the expression "wilfully furnishes . . . false information" in section 21(i)(c) of the Enactment. The question is whether the word "wilfully" governs only the one word "furnishes" or whether it also governs the word "false."

Now if the Legislature had intended by "false . . . information" to denote "wilfully false . . . information," it could easily have said so: and from the fact that it has not said so, the Court, in my opinion, ought to hold that it deliberately refrained from saying so.

According to "the grammatical and ordinary sense of the words," and "the plain, fair, literal meaning of its words," the Enactment, in my opinion, indicates that the word "wilfully" governs only the one word "furnishes," and not the word "false" in addition; and I think it would be unjustifiable and wrong for the Court to add the word "wilfully" before the word "false."

I rule that an offence is committed if the false information is wilfully furnished, irrespective of whether that information is or is not wilfully false.

I am aware that in interpreting section 39(e) of the Trade and Customs Enactment, the Court has held that in the expression "knowingly . . . is in possession of . . . uncustomed goods," the word "knowingly" governs the expression "uncustomed goods," and that no offence is committed unless the accused person knows that duty has not been paid on the goods.

But this interpretation can only be justified on the ground that it would "lead to some absurdity" or "lead to manifold injustice" if the alternative construction were adopted.

As an example of this alternative construction one might take the instance of a person who purchases a bottle of beer at an up-country shop: this person and the shopkeeper would commit an offence if the wholesale dealer at Johore Bahru had, months or years previously, omitted, intentionally or unintentionally, to pay the duty on the beer.

The imposition of such a vicarious liability appeared to the Court so absurd and unjust that it held that the Legislature could not have so intended.

But no such consideration applies in the case of returns made under the Rubber Regulation Enacment: and in the great majority of cases it is scarcely more difficult for the occupier of a holding to state how many rubber plants he has than to state how many pounds he weighs: in any case the information is ascertainable with comparative ease, and it is not necessary for the occupier to rely on any act of another person.

In adhering to the great fundamental principle that the Court ought to give to an Enactment the plain, fair, literal meaning of its words, I merely follow what has been called the Golden Rule by a Lord Chief Justice of England: see *Maxwell* on the Interpretation of Statutes, 7th edition, p. 3.

I have asked the Deputy Public Prosecutor to bring my ruling to the notice of the Legal [50] Adviser, [50] and if by following the Golden Rule I have imposed on the subject a criminal liability which the Legislature did not intend, I have no doubt that the Legislature will clarify the position.

Appeal dismissed.

Solicitors: *S. C. Goho & Co.*

GOH ENG SEONG v. TAY KENG SEOW & ORS.

[O.C.J. (Mills J.) December 19, 1935]

[Johore Originating Summons No. 67 of 1935]

Fixtures — Things "attached to the earth" — Whether immovable property — Interpretation — Adoption of English law in Johore — Civil Procedure Code, s.303; Land Enactment, 1910, s.56A; General Clauses Enactment, 1911, *s.2(vii).*

The English law of fixtures applies in the State of Johore so that any machinery attached to the earth or permanently fastened to anything attached to the earth is part of the land on which it is installed.

By a charge made on August 20, 1929 the 1st defendant charged in favour of the 2nd defendant the land and buildings comprising the Chin Lim Pineapple Factory; and by a bill of sale made on May 5, 1932, assigned to the plaintiff the machinery installed in the factory.

In these proceedings the plaintiff applied for liberty to sell the machinery. The 2nd defendant opposed the application on the ground that the machinery in question was comprised in the property already charged to them.

The application was heard by Mills J. on December 11, 1935.

Barrett for the plaintiff.

1st defendant in person.

Coltart for the 2nd defendant.

Cur. Adv. Vult.

Mills J.: In this matter a dispute arose as to machinery which may be claimed as "land" under a charge, and machinery which may be claimed as "movable property" under a bill of sale. In section 56A of the Land Enactment, 1910, the word "land" is interpreted to include "things attached to the earth or permanently fastened to anything attached to the earth." Moreover, such things are made "immovable property" by section 2(vii) of the General Clauses Enactment.

Accordingly the second defendant claimed as land under his charge such machinery as was attached to